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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH LYNN CAGNEY,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Case No. 13-cv-1766 BAS (JMA)

ORDER:

- (1) ADOPTING REPORT AND RECOMMENDATION;**
- (2) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND**
- (3) DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

[ECFs 19, 15, 14]

On July 29, 2013, Plaintiff Deborah Lynn Cagney appealed Defendant Carolyn W. Colvin's denial of Plaintiff's disability insurance benefits. ECF 1. The parties filed cross-motions for summary judgment. ECFs 14, 15. Magistrate Judge Jan M. Adler reviewed the motions and recommended in a Report and Recommendation ("Report") that this Court deny Plaintiff's motion and grant Defendant's. ECF 19. Plaintiff objected to the Report. ECF 20.

For the following reasons, the Court **ADOPTS** the Report in its entirety (ECF 19), **OVERRULES** Plaintiff's objections (ECF 20), **GRANTS** Defendant's

1 motion for summary judgment (ECF 15), and **DENIES** Plaintiff's motion for
 2 summary judgment (ECF 14).

3 **I. LEGAL STANDARD**

4 A district court's duties concerning a magistrate judge's report and
 5 recommendation and a party's objections thereto are set forth in Rule 72(b) of the
 6 Federal Rules of Civil Procedure and in 28 U.S.C. § 636(b)(1). When no
 7 objections are filed, the district court is not required to review the magistrate
 8 judge's report and recommendation. *See United States v. Reyna-Tapia*, 328 F.3d
 9 1114, 1121 (9th Cir. 2003) (holding that 28 U.S.C. § 636(b)(1)(c) "makes it clear
 10 that the district judge must review the magistrate judge's findings and
 11 recommendations *de novo if objection is made, but not otherwise*") (emphasis in
 12 original).

13 In contrast, the duties of a district court in connection with a magistrate
 14 judge's report and recommendation are quite different when an objection has been
 15 filed. These duties are set forth in Rule 72(b) of the Federal Rules of Civil
 16 Procedure and in 28 U.S.C. § 636(b)(1). Specifically, the district court "must
 17 make a *de novo* determination of those portions of the report . . . to which objection
 18 is made," and "may accept, reject, or modify, in whole or in part, the findings or
 19 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(c); *see also*
 20 *United States v. Raddatz*, 447 U.S. 667, 676 (1980); *United States v. Remsing*, 874
 21 F.2d 614, 617 (9th Cir. 1989).

22 **II. ANALYSIS**

23 In her motion for summary judgment, Plaintiff argues that the
 24 Administrative Law Judge ("ALJ") who denied her benefits improperly rejected
 25 her treating physician's opinions. While typically a treating physician's opinions
 26 are given greater deference than non-treating physicians, Judge Adler determined
 27 that the ALJ validly rejected the treating physician's opinions on two of the three
 28 stated grounds. Plaintiff objects, arguing that Judge Adler misstated and

1 misapplied the law in this area.

2 Judge Adler determined that the ALJ properly rejected the treating
 3 physician's (Dr. Devor) opinions because there were discrepancies between his
 4 opinion and his clinical notes. Plaintiff now objects, arguing that the treatment
 5 record is not necessarily inconsistent because mild Guillain Barre Syndrome may
 6 still be disabling.

7 An ALJ may reject a treating or examining physician's opinion if the ALJ
 8 can state clear and convincing reasons to do so. *Lester v. Chater*, 81 F.3d 821,
 9 830–31 (9th Cir. 1995). The ALJ's reasons must be supported by substantial
 10 evidence. *Id.* Substantial evidence is a highly deferential standard requiring “more
 11 than a mere scintilla, but less than a preponderance.” *Valentine v. Comm'r Soc.*
 12 *Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009).

13 “Where evidence is susceptible of more than one rational interpretation, it is
 14 the ALJ's conclusion which must be upheld. *Sample v. Schweiker*, 694 F.2d 639,
 15 642 (9th Cir. 1982) (citing *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.1971)).

16 Here, substantial evidence relied on by the ALJ contradicts Dr. Devor's
 17 opinion that Plaintiff is disabled. Dr. Devor repeatedly refers to Plaintiff's
 18 condition as either “mild” or “very mild.” While Plaintiff contends that even mild
 19 Guillain-Barre Syndrome may be disabling, a mild diagnosis still contradicts Dr.
 20 Devor's opinion that Plaintiff was incapable of performing any work.

21 Similarly, the laboratory tests showing inflammatory polyneuritis do not in
 22 and of themselves prove disability because they are contradicted by Dr. Devor's
 23 notes showing mild symptoms after the testing. AR 426.

24 Lastly, the Plaintiff continues to claim that evidence of Plaintiff's Guillain-
 25 Barre Syndrome necessarily demonstrates she is disabled. However, there is no
 26 evidence that the ALJ either disagreed with the diagnosis or any of the test results.
 27 Instead, the ALJ's opinion is based on his determination that Plaintiff's symptoms
 28 were not disabling. Accordingly, because the ALJ's decision is based on

1 substantial evidence, the ALJ properly rejected Dr. Devor's opinion based on
2 substantial evidence, and the ALJ did not ignore the objective tests or Plaintiff's
3 Guillain-Barre Syndrome diagnosis, the Court **OVERRULES** Plaintiff's
4 objections to the Report. ECF 20.

5 **III. CONCLUSION & ORDER**

6 After considering Plaintiff's objections and conducting a *de novo* review, the
7 Court concludes that Judge Adler's reasoning in the Report is sound. In light of
8 the foregoing, the Court **ADOPTS** the Report in its entirety (ECF 19),
9 **OVERRULES** Plaintiff's objections (ECF 20), **GRANTS** Defendant's motion for
10 summary judgment (ECF 14), and **DENIES** Plaintiff's motion for summary
11 judgment (ECF 15). The Court **AFFIRMS** The ALJ's denial of disability
12 insurance benefits.

13 **IT IS SO ORDERED.**

14 Dated: March 24, 2015



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16 Hon. Cynthia Bashant
United States District Judge
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